NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
ROBERT J. GLADWIN, JUDGE

DIVISION III

CA07-121

JANUARY 16, 2008

STEVE GILMORE APPELLANT	APPEAL FROM THE GRANT COUNTY CIRCUIT COURT [NO. E98-183-1]
V.	HON. JOHN COLE, CIRCUIT JUDGE
ELAINE GILMORE CARTER APPELLEE	AFFIRMED

Appellant Steve Gilmore appeals several aspects of a decree dividing property pursuant to a divorce. We find no error and affirm.

During the parties' marriage, they owned and operated a Shell Superstop convenience store ("Shell store") and a combination mini-storage/video-rental/tanning-bed/U-Haul facility ("the mini-storage"). Elaine primarily worked at the Shell store, and Steve generally ran all the enterprises.

After the parties separated in mid-1998, Elaine's presence at the Shell store was no longer welcome, and she was not permitted to participate in its operation. She received no compensation after June 1998 (although there is some testimony that she took some cash

from the store). Steve continued to run the couple's businesses and would for the next several years.

In September 1998, Elaine filed for divorce. She asked the court to divide the marital property, which included the Shell store, the mini-storage, rental properties, and a farm. The court was also called upon to allocate approximately $800,000 in commercial-loan debt and approximately $100,000 in credit-card debt. Numerous hearings followed over the next six and one-half years, and the trial court appointed two masters to assist with this complex case.[1] Ultimately, the court ordered that: 1) the Shell store be sold to a private buyer and the proceeds placed in the court registry; 2) several other properties, including the mini-storage, be sold at public auction and the proceeds placed in the court registry; 3) creditors be paid from the sale proceeds, with the remaining $270,904.47 distributed unequally in Elaine's favor; 4) all credit-card debt be allocated to Steve; 5) the farm be divided and sold as marital property. Steve appeals and makes the following arguments.

Credit Card Debt

Steve contends first that the trial court erred in allocating all credit-card debt to him. The trial judge has authority to consider the allocation of debt in a divorce case. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003). In fact, an allocation of the parties' debt is an essential item to be resolved in a divorce dispute. *Id*. It must be considered in the

[1] The first, Larry Harden, was appointed in 2000 to ascertain the parties' holdings and examine business records after Steve was held in contempt for refusing to comply with discovery orders. The second, David M. Glover, was appointed in 2002 to determine an equitable division of the parties' property and resolve certain pending issues.

context of the distribution of all of the parties' property. *Id*. A judge's decision to allocate debt to a particular party or in a particular manner is a question of fact and will not be reversed on appeal unless clearly erroneous. *Id*. When considering the allocation of debt, it is also appropriate that the judge consider who should equitably be required to pay it. *See id*.

Between the time that the parties separated in approximately June 1998 and December 1999, Steve charged approximately $117,000 on ten credit cards. He made about $100,000 in payments on those cards out of the Shell store and mini-storage accounts. However, by March 2002, he still owed $50,000 to $60,000 on the cards. The evidence showed that he continued to carry large balances on those cards and others through 2003.

Steve explained that he incurred the credit-card debt when he began an expansion project on the mini-storage facility in early 1998. He said that he built the new units without obtaining loan approval to finance the construction. Near the time that the parties separated, when the project was nearly complete, he asked Elaine to sign a note for the financing, which she refused to do. Steve described the note at various times as being between $75,000 and $98,000. According to him, when Elaine would not sign the note, he financed the project with personal loans and cash advances on credit cards. He testified that he spent a total of $80,000 on the mini-storage project. He also testified that some credit-card charges were for repairs to the couple's rental properties.

Elaine testified that she was unaware in mid-1998 that the mini-storage facility was being expanded. She acknowledged that, when she did learn of the project as it was being completed, she refused to incur further debt at a time when she and Steve were separating.

Steve argues that allocation of the credit-card debt to him was inequitable because much of the debt was directly related to the operation of the parties' businesses during separation, with $80,000 being attributable to the mini-storage construction project. This, he says, allowed Elaine to profit from the increased value of the expanded facilities when the property was sold. We find no clear error on this point.

The credit-card debt was incurred solely by Steve after the parties separated. Elaine testified without contradiction that she made no credit-card purchases after July 1998 and that, at the time of the separation, the couple's credit cards had minor balances. Additionally, there was no documentary proof, such as invoices or receipts, that Steve actually used cash advances from the credit cards to pay suppliers and laborers on the mini-storage project. By contrast, there was considerable documentation that he made extensive personal use of the credit cards. Receipts in the record reflect purchases from Sears, Dillards, hotels, flower shops, Montgomery Ward, Bass Pro Shop, a furniture store, restaurants, a liquor store, Victoria's Secret, and a payment of fees to his attorney. When questioned about these purchases, Steve acknowledged that many of them were personal. Additionally, Elaine testified that Steve obtained some of the credit cards after the separation by fraudulently signing her name. Further, there was evidence that Steve carried out the expansion project without Elaine's knowledge or approval.

In light of these factors and our deference to the trial judge on matters of credibility, *Taylor v. Taylor*, 369 Ark. 31, ___ S.W.3d ___ (2007), we cannot say that the trial court clearly erred in its equitable resolution of this issue.

Sale of Mini-Storage

On October 16, 2001, the court entered an order directing the public sale of several properties, included the following:

> All of the Southwest Quarter of the Northwest Quarter of Section 5, Township 2 South, Range 12 West, Saline County, Arkansas, less and except that portion lying within the right of way of Highway #367. Subject to restrictions, covenants, conditions, and easements of record, if any. Better known as the Arch Street Mini Storage, U-Haul, Tanning Salon and Video Store located at 19501 Arch Street.

The property was purchased by Rex and Pamela Wilkins on November 16, 2001, for $630,000.

On December 21, 2001, the Wilkinses informed the court that a disagreement had arisen between them and Steve over whether their purchase included only the described real estate or the real estate *and* the business assets of the mini-storage. The court ruled that the businesses were sold along with the real estate, and Steve contends that the ruling was error.

As a general rule, court orders or judgments are construed like any other instruments; the determinative factor is the intention of the court, as gathered from the judgment itself and the record. *Magness v. McEntire*, 305 Ark. 503, 808 S.W.2d 783 (1991). Orders should be reviewed by looking to the order itself, pleadings, and any evidence presented. *See id*.

The court's order provides a legal description for the realty but also references "the Arch Street Mini Storage, U-Haul, Tanning Salon and Video Store." Further, at a hearing held shortly before the order was entered, the parties stated on the record their agreement to sell certain assets. The following colloquy took place:

STEVE'S ATTORNEY: The assets that will be sold, the Arch Street Shell Super Stop will be sold ... The Arch Street mini-storage - U-Haul - Tanning - Video store will be sold at public auction.

COURT: Mini-storage, the video, and what else is to be sold at public auction?

STEVE'S ATTORNEY: Tanning and U-Haul.

This exchange indicates an intention that the businesses would be sold as well as the real estate. We therefore find no error in the court's interpretation of its own order. Further, we note that Steve has not demonstrated that $630,000 was an unreasonable amount for both the real estate and the business assets.

Payment to Contractor

Steve asked the court to award a contractor named Gary Ausley $25,000 from the court registry for work that Ausley allegedly did on the mini-storage project. The court did not do so, and we see no basis for reversal. Steve provided no documentation of how much money he owed Ausley or if he owed Ausley any money at all. No invoices, work orders, or contracts were produced. The fact that Ausley had not pressed Steve for payment in the many years following completion of the construction, had not filed a lien, and had not issued an invoice may have caused the court to doubt Steve's credibility on this matter, which was the court's prerogative. *See Taylor*, *supra*.

Farm Property

Steve testified that he bought farm property from his grandfather, Marvin Pruett, in 1976 and paid it off at the rate of $100 per month in 1983, the year before he and Elaine

were married. The court ruled that the farm was marital property, and Steve argues that this ruling was in error. We disagree.

Despite Steve's testimony that he purchased the farm from Marvin Pruett in 1983, on March 31, 1989, Pruett deeded the property to four of his children. Those children then deeded the property to Steve on October 3, 1989. For reasons that are unclear, Pruett executed another deed in 1994, conveying the property to both Steve and Elaine. After 1994, Steve and Elaine paid taxes on the property. Elaine testified that they treated the property as belonging to both of them and listed it as a joint holding on financial statements.

Steve contends that the farm was his non-marital property because it was a gift to him. He points out that the October 1989 deed from his relatives stated no consideration, and he cites Ark. Code Ann. § 9-12-315(b)(1), which exempts property acquired by gift from the definition of marital property.

The law presumes a gift when the donor registers legal title in a family member's name. *Horton v. Horton*, 92 Ark. App. 22, 211 S.W.3d 35 (2005). However, there was ample evidence in this case to rebut the presumption that the farm property was a gift to Steve. Steve testified—in complete contradiction to his argument that the property was a gift—that he purchased the land from his grandfather in 1983. Additionally, Elaine testified that Steve's $100 per month payments to his grandfather continued into their marriage, indicating that the farm was an asset purchase rather than a gift. She also testified that the couple treated the property as their own, paid taxes on it, and represented it as a joint holding to others. Further, Steve's grandfather purported to deed the property to both Steve and Elaine in 1994. Given

the complete state of the evidence, we cannot say that the court's finding that the farm was marital property is clearly erroneous. *See Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005) (holding that we will not reverse a trial court's ruling that an item is marital property unless the ruling is clearly erroneous).

Steve's Salary While Running the Business

Steve asked the court to award him a salary for the years he ran the couple's businesses while the divorce was pending. None was awarded, and Steve argues, without citation to authority, that the court erred.

The evidence showed that Steve lived off the revenues of the couple's businesses during the time he ran them. He had no personal checking account for at least part of that period, did not draw a salary, and, if he needed anything, used business funds for the purchase. Additionally, as mentioned previously, the evidence showed that Steve used credit cards for personal items and made payments on the cards using company funds. He was therefore living off marital funds during the years that this case was pending. We see no clear error in the trial court's decision not to award him a salary in addition to the compensation he already received.

Unequal Distribution of Marital Funds

When the final order was entered on July 12, 2006, $270,904.47 remained in the court registry for distribution to the parties. The court awarded Elaine $174,372.35 (about sixty-four percent) plus $12,500 in attorney fees. Steve was awarded $84,032.12. The court listed the following reasons for the unequal distribution: credit-card debt; sale of timber; payment

of sales tax for Arch Street Superstop; properties (let go back); depreciation of personal property that went unsold; and Steve's receipt of two rental payments of $1,492.28 prior to the rents being deposited into the court registry.

Steve argues first that the unequal distribution was barred by the doctrine of res judicata because, on October 16, 2001, the court entered a "Divorce Decree," which recited that the funds in the registry would be divided equally. The question of whether res judicata applies is one of law. *See, e.g., Davis v. Little Rock Sch. Dist.*, 92 Ark. App. 174, 211 S.W.3d 587 (2005). We hold that it did not apply here.

Both the claim-preclusion and issue-preclusion aspects of res judicata require that a final judgment be entered. *See Beebe v. Fountain Lake Sch. Dist.*, 365 Ark. 536, 231 S.W.3d 628 (2006). The October 16, 2001 divorce decree was not a final order. It purported to grant the divorce and ordered that some of the couple's property be sold. But the court expressly retained jurisdiction for "all other property issues not resolved" and for "the division of other properties in this marital relationship and for any offsets or claims . . . ." Unquestionably, the court contemplated that further proceedings would ensue and therefore did not enter a final order. *See generally Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002); *Roberts v. Roberts,* 70 Ark. App. 94, 14 S.W.3d 529 (2000). Thus, the trial court was free to change its mind later in the case to make an unequal distribution of marital property. *See Clark v. Progressive Ins. Co.*, 64 Ark. App. 313, 984 S.W.2d 54 (1998).

Steve argues next that the court did not adequately explain the unequal distribution of marital property and that the unequal distribution was not justified. Arkansas Code

Annotated section 9-12-315(a)(1)(A) (Repl. 2002) provides that, at the time the divorce decree is entered, all marital property is to be distributed equally unless such a division would be inequitable. If the property is divided unequally, then the court must give reasons for its division in the order. *See* Ark. Code Ann. § 9-12-315(a)(1)(B) (Repl. 2002). A trial judge's unequal division of marital property will not be reversed unless it is clearly erroneous. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005).

Some of the court's "shorthand" reasons for unequal division are difficult to understand, but, as a whole, they constitute a sufficient explanation. *Compare Baxley v. Baxley*, 86 Ark. App. 200, 167 S.W.3d 158 (2004) (reversing where the court simply listed the statutory factors contained in Ark. Code Ann. § 9-12-315(a)(1)(A)(i)-(ix) (Repl. 2002)). Further, the court's reasons and the evidence as a whole show that the unequal division was justified. Steve made credit-card payments from the marital businesses to purchase such things as restaurant meals, liquor, airline tickets, hotel rooms, furniture, Victoria's Secret merchandise, appliances for his mother's home, and his own attorney fees. He admitted that in the year or so following the parties' separation his personal purchases amounted to $6200, but the evidence supports a finding that several thousand more was spent on these and other similar items, including late fees and over-limit charges. There was also evidence that Steve used several thousand dollars in business funds to pay for such expenses as payments on his mother's house, hunting dues, and repairs to his brother's girlfriend's truck. Further, Steve commissioned the cutting of timber on marital property pending the divorce but did not place the $5000 he received into the court registry. The two rental payments of $1492.28 that he

received were likewise marital property. The reference to sales tax concerns the fact that, during the time that Steve was operating the Shell store between 1999 and 2001, sales taxes were not paid. Over $151,000 was owed, more than $46,000 of which was penalty and interest.

Based on the above, we believe that the trial court's unequal division of the $270,904.47, giving Elaine fourteen percent over and above a fifty-percent share, was equitably sound. A trial judge has broad powers to distribute property in order to achieve an equitable distribution. *Keathley v. Keathley*, 76 Ark. App. 150, 61 S.W.3d 219 (2001). The overriding purpose of the property-division statute is to enable the court to make a division of property that is fair and equitable under the circumstances. *Id*. Furthermore, our statute does not compel mathematical precision in the distribution of property; it simply requires that marital property be distributed equitably. *Id*.

Affirmed.

GRIFFEN, J., agrees.

HART, J., concurs.